

UNITED STATES DISTRICT COURT  
DISTRICT OF MASSACHUSETTS

RICO PERRY,

Plaintiff,

v.

BRIAN HIGGINS, et al.,

Defendant.

Civil Action No. 1:23-CV-10228-WGY

**DEFENDANTS' MOTION TO WITHDRAW ITS MOTION TO DISMISS**

Defendants, by and through their attorney, Joshua S. Levy, Acting U.S. Attorney for the District of Massachusetts, move to withdraw their Motion to Dismiss that was filed on October 3, 2024. Doc. No. 40. Defendants moved to dismiss Plaintiff Rico Perry's ("Plaintiff") Complaint against Bureau of Alcohol, Tobacco, Firearms, and Explosives ("ATF") Agents Brian Higgins and Keith Medeiros because Plaintiff had failed to perfect service within the time provided by the Federal Rules of Civil Procedure. Doc. No. 41.

However, since the time of the filing of Defendants Motion to Dismiss, the undersigned reached agreement with Plaintiff's counsel as to completing service on Defendants in accordance with Fed. R. Civ. P. 4(e)(2)(C) by delivering a copy of the summons and the complaint to ATF agency counsel. Plaintiff's counsel has informed the undersigned that this service will be completed within the next three weeks. Defendants will respond to Plaintiff's complaint within 60 days after service is completed per Fed. R. Civ. P. 12(a)(3).

As such, Defendants' request this Court withdraw their Motion to Dismiss and cancel the hearing the Court on the Motion to Dismiss currently scheduled for November 20, 2024.

Respectfully submitted,

JOSHUA S. LEVY  
Acting United States Attorney

Dated: November 14, 2024

By: /s/ Mark Sauter  
Mark Sauter  
Assistant United States Attorney  
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**LOCAL RULE 7.1 CERTIFICATION**

I, Mark Sauter, hereby certify that pursuant to L.R. 7.1(a)(2), I conferred with Plaintiff's counsel in advance of filing this motion in a good faith attempt to narrow or resolve the issues raised by this motion.

Dated: November 14, 2024

By: /s/ Mark Sauter  
Mark Sauter

**CERTIFICATE OF SERVICE**

I, Mark Sauter, Assistant United States Attorney, hereby certify that this document filed through the ECF system will be sent electronically to the registered participants as identified on the Notice of Electronic Filing (NEF) and paper copies will be sent to those indicated as non-registered participants.

Dated: November 14, 2024

By: /s/ Mark Sauter  
Mark Sauter